REMARKS

In this reply, claims 22 and 36-38 are previously presented, claims 23-35 are original, and new claims 39 -46 have been added in this amendment. No new matter has been added.

Rejection Under 35 U.S.C. § 103:

Claims 22-23, 28-29, 31, 33, 35-36, and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwama (U.S. Patent No. 6,600,735, hereafter Iwama) in view of Poretsky (U.S. Patent No. 6,141, 322, hereafter Poretsky). Applicant notes that claim 38 (which incorporates claim 37), which is rejected in this section, depends from independent claim 37 which is not addressed in this section. Accordingly, the remarks below address independent claims 22 and 37.

Claim 22 recites the features "at an interface for said first telephony network in said packet switched network, receiving information on resource status in the second telephony network; and when said information on resource status indicates that resources are available in said second telephony network to complete setup of the call therein, implementing call setup for the call through said packet switched data network". Claim 37 recites similar features. The proffered combination of prior art does not render these features obvious.

On page 3, the OA acknowledges that Iwama does not disclose the above features, and supplies Poretsky to cure this deficiency. The OA cites the connection admission control (CAC) feature of the ATM switch of Poretsky as equivalent to the feature of implementing call setup through the data network once information indicates that resources are available in the second telephony network. Applicant submits that the referenced feature of Poretsky is not equivalent to Applicant's above-quoted features, and further contends that the combination of references does not suggest Applicant's claim features.

It is believed that an overview of Applicant's claimed subject matter is helpful in clarifying the matter at issue. Applicant's system includes network 1 (PSTN 1 – the first telephony network), network 2 (the IP data network, hereafter the "data network" 107) and network 3 (PSTN 2 – the second telephony network). The above-quoted language from claim 22 is directed to the practice of checking the availability of *network 3* (PSTN 2) prior to setting up a call in *network 2* (the data network). Applicant's system and method employ this feature to avoid the time and expense of setting up a call the data network 107 in cases where network 3 (PSTN 2) is not available, which practice wastes time and communication resources. Thus, the claimed feature checks the availability

of one network prior to setting up a call in *another* network, that is located earlier in the progress of a telephone call than the network being checked for availability. The above differs from the normal order of events because communication systems generally do not check the availability of a particular network (such as PSTN 2) until the telephone call or other communication session type reaches that network.

In contrast to the above, Poretsky discloses only the more conventional practice of checking the availability of a device (a switch, not a network in the case of Poretsky) prior to transmitting data through that *same* device. More specifically, Poretsky recites that "ATM switches . . . will first determine whether they have the capacity to handle a proposed call before accepting the call." See col. 1, lines 35-37. Poretsky elaborates on the function of bandwidth allocation using CAC (Connection Allocation Control), reciting: "A number of different bandwidth allocation algorithms have been used for CAC, with the goal of each algorithm being to maximize the admission region and statistical gain of one or more particular types of ATM traffic over a switch without exceeding the bandwidth of the switch." (See col. 2, lines 48-53, emphasis added).

Thus, Poretsky is directed to checking the bandwidth availability of an ATM switch as a prerequisite to sending data through *the very switch being checked*, which differs markedly from the claimed system and method. The approach of Poretsky is similar to what the matter disclosed in the Background of the invention section of Applicant's specification in which the availability of PSTN 2 is determined only after the call has progressed through the data network 107. Poretsky does not remotely suggest checking a network (or any other entity) that is well ahead of the current progress of a phone call, or other data communication session type, within a communication system, to decide whether to set up a call in *another* network – i.e. one located earlier in the progress of the call than the network being checked for capacity/bandwidth. Thus, Poretsky does not teach or suggest the above features of claims 22 and 37.

Based on the foregoing, Applicant respectfully contends that the motivation to modify Iwama to meet the features of claim 22 is derived from knowledge gleaned only from Applicant's disclosure, which constitutes impermissible hindsight reasoning. See M.P.E.P. § 2145 (X)(A). Therefore, claims 22 and 37 are not obvious over Iwama in view of Poretsky. The dependent claims are patentable by virtue of their dependency on their respective independent claims. Applicant notes, in particular, that claim 38 is patentable by virtue of its dependency on claim 37.

Rejection Under 35 U.S.C. § 103:

Claims 24-27, 30, 32, 34, and 37 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwama, in view of Poretsky, further in view of Elliott et al. (U.S. Patent No. 6,614,781, hereafter Elliott).

Applicant has already shown that claims 22 and 37 recite features not disclosed by, or rendered obvious by the combination of Iwama or Poretsky. Moreover, Elliott does not cure these deficiencies. Accordingly, claims 22 and 37 are patentable over Iwama, in view of Poretsky, further in view of Elliott. Further, claims 23-27, 30, 32, 34 are patentable by virtue of their dependency on claim 22.

The New Claims:

New claims 39-46 are believed to patentable for many of the reasons set forth above in connection with claims 22-38.

Conclusion:

Applicant submits that this application is in condition for allowance. Accordingly, reconsideration is respectfully requested. Should there remain any unanswered questions, the examiner is requested to call the undersigned attorney at the telephone number indicated below.

Since Applicant paid for six (6) independent claims and thirty-five (35) total claims upon filing this application, it is not believed that any fees are due for the claims added in this paper as a result of the addition of the new claims. Enclosed with this response is a Request for Continued Examination. The fees for a one-month extension of time and the RCE are included herewith. The Commissioner is hereby authorized to deduct any fees believed due, or credit any overpayment to our Deposit Account No. 50-4711.

Respectfully submitted,

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